



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Beneco Enterprises, Inc.

File: B-278591

Date: February 17, 1998

Patrick S. Hendrickson, Esq., Kirton & McConkie, for the protester.
Marian E. Sullivan, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Elimination of protester's proposal from competitive range is unobjectionable where agency reasonably determined that the proposal contained multiple deficiencies in three of five technical/management evaluation factors, including the two most important factors, as a result of which the proposal would require major revisions to meet the solicitation's minimum requirements.

DECISION

Beneco Enterprises, Inc. protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. FA4416-97-R-0015, issued by the Department of the Air Force as a Simplified Acquisition of Base Engineering Requirements (SABER) procurement for maintenance, repair, and minor construction work at various Air Force facilities in Maryland. Beneco protests that the agency erroneously determined that Beneco's proposal was so deficient as not to have a reasonable chance of being selected for award.

We deny the protest.

The RFP, issued by the Air Force on July 28, 1997, contemplated award of an indefinite delivery/indefinite quantity contract for a base period with four 1-year option periods. The RFP provided that award would be made to the offeror whose proposal was most advantageous to the government, considering technical, management, and cost factors, with technical/management factors being of primary importance. Section M of the RFP listed the following technical/management evaluation factors in descending order of importance: (1) project management ability; (2) project development/planning and minimal design; (3) subcontracting support capability; (4) experience and past/present performance; and (5) project execution and technical capability.¹ Each evaluation factor and subfactor was to be

¹Each factor contained multiple subfactors.

rated on a color-coded scale² and assigned a risk rating. The RFP advised offerors that proposals must demonstrate that the offeror has sufficient technical expertise, experience, and resources to perform the contract requirements, and is able to plan, organize, and use those resources in a coordinated and timely fashion, specifically noting that "[i]n no case shall words like 'we will comply with the requirements of the contract' or equivalent statements be acceptable to meet the requirements of the RFP."

Several offerors, including Beneco, submitted initial proposals by the September 4 closing date. Upon conducting an initial review, the agency identified numerous weaknesses and deficiencies in Beneco's proposal. By letter telecopied to Beneco on October 13, the agency transmitted seven deficiency reports (DRs) and two clarification requests (CRs) related to specific portions of Beneco's proposal, advising Beneco, "You must explain and clarify questions and deficiencies on your proposal, in writing, via [f]acsimile not later than 5:00 PM, 14 Oct 97."³ Beneco telecopied its responses to the agency at 11:16 a.m. the following day.

Thereafter, the agency reevaluated Beneco's proposal taking into consideration Beneco's responses to the CRs and DRs, and concluded that Beneco's proposal still contained multiple weaknesses and deficiencies and that the proposal would require major revisions to meet the RFP's minimum requirements. By memorandum dated October 20, the agency advised Beneco that its proposal had been eliminated from the competitive range. Beneco subsequently requested a debriefing, which the agency conducted on November 6. Beneco filed this protest on November 7.

Beneco protests that the agency erred in determining that its proposal was so deficient as to have no reasonable chance of being selected for award and, therefore, that the agency improperly eliminated its proposal from the competitive range. As discussed below, the record provides no basis to object to the agency's determination.⁴

²Blue/exceptional; green/acceptable; yellow/marginal; and red/unacceptable.

³Beneco states that the agency contacted Beneco's Director of Business Development by telephone during the morning of October 13, advised him that the agency would be transmitting the CRs and DRs, and asked "whether Beneco would be able to return them by tomorrow." Beneco's representative responded, "We will do what we can."

⁴Beneco also complains that the agency afforded Beneco insufficient time to respond to the CRs and DRs; however, this portion of the protest is not timely filed. To the extent Beneco believed that the time period established for responding to the CRs and DRs was inadequate, it was required to protest that matter before the
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Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, the agency is not required to include the proposal in the competitive range. Laboratory Sys. Servs., Inc., B-256323, June 10, 1994, 94-1 CPD ¶ 359 at 2; see also Beneco Enters., Inc., 70 Comp. Gen. 574, 578 (1991), 91-1 CPD ¶ 595 at 6 (Beneco's proposal was properly eliminated from the competitive range in another SABER procurement for failing to demonstrate adequate understanding of solicitation requirements). The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method for meeting them. In reviewing an agency's decision to eliminate a proposal from the competitive range, we will not evaluate the proposal anew, but instead will simply examine the agency's evaluation to ensure that it was reasonable and in accord with the provisions of the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 3-4. A protester's mere disagreement with an agency's evaluation does not, without more, establish that the evaluation was unreasonable. Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85 at 4-5.

With its report responding to Beneco's protest, the agency provided the evaluation record regarding the decision to eliminate Beneco's proposal from the competitive range. The record shows that Beneco's proposal received ratings of "red/unacceptable" under three of the five evaluation factors, including the most important factor, "project management ability," (where Beneco's proposal was rated "red/unacceptable" under three of the five subfactors), and the second most important evaluation factor, "project development," (where Beneco's proposal was rated "red/unacceptable" under both of two subfactors). We have reviewed the record and find no basis to question the reasonableness of the agency's evaluation of Beneco's proposal.

For example, regarding the most important evaluation factor, "project management ability," the RFP required that offerors include a quality control plan which would include the "number of active projects assigned to each quality control inspector." Beneco's proposal did not respond to this requirement. DR No. 2, transmitted to Beneco on October 13, stated, among other things: "Offeror fails to describe the

⁴(...continued)

time set for receipt of the additional information. 4 C.F.R. § 21.2(a)(1) (1997); Alamo Acoustical Restoration Co., B-228429, Feb. 16, 1988, 88-1 CPD ¶ 150 at 3. Here, when asked by the contracting officer whether it could respond by the following day, Beneco's representative said "We will do what we can" and, in fact, submitted responses before noon the following day. Since Beneco opted not to protest the matter until November 7, this allegation is untimely and not for consideration on the merits.

number of active projects that will be assigned to each Quality Control Inspector." Beneco responded to this portion of the DR stating:

At this point, it is impossible to predict the number of jobs that will be assigned to each quality control staff member. The number of jobs assigned is determined by a variety of factors, including complexity of the job, size, and schedule.

In short, Beneco expressly declined to provide specific, material information required by the RFP. Accordingly, there is no basis to question the reasonableness of the agency's assessment of a "red/unacceptable" rating for this evaluation factor.

As another example, under the second most important evaluation factor, "project development and planning," the solicitation required that offerors "[i]dentify a plan, contents, and time frame for updating property records." Beneco's proposal failed to address this requirement. Among other things, DR No. 5 advised Beneco: "Offeror fails to identify a plan for updating property records." Beneco's response to DR No. 5 contained no discussion of any plan to update property records and, accordingly, Beneco's proposal was rated "red/unacceptable" under this evaluation factor. The agency report responding to Beneco's protest included a memorandum prepared by the agency following Beneco's November 6 debriefing which quotes Beneco's representative as expressly acknowledging during the debriefing that Beneco's proposal did not respond to this solicitation requirement. Beneco's comments on the agency report do not address this matter. Accordingly, the record provides no basis to question the reasonableness of the agency's evaluation with regard to this evaluation factor.

The agency also found Beneco's proposal deficient for failure to adequately comply with solicitation requirements that offerors: provide plans for obtaining the services of all major engineering disciplines; submit adequate plans for responding to emergency warranty calls; discuss the qualifications of superintendents; submit complete design submittal packages; submit plans for meeting normal and quick response times for designs; and submit adequately documented design concepts. We have reviewed the record regarding the agency's evaluation of Beneco's proposal regarding these deficiencies and see no basis to question the reasonableness of the agency's evaluation. On the contrary, the record establishes that the agency reasonably determined that Beneco's proposal would require major revisions in order to comply with the solicitation's minimum requirements and, therefore, reasonably eliminated Beneco's proposal from the competitive range.

The protest is denied.

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